Bay Area Air Quality Management District

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Proposed Amendments to BAAQMD Regulation 2, Rule 6, Major Facility Review

Draft Staff Report

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STAFF REPORT

Regulation 2, Rule 6, Major Facility Review

EXECUTIVE SUMMARY

The District proposes to amend the following rule to modify two provisions identified by EPA as possibly inconsistent with 40 CFR Part 70:

Regulation 2, Rule 6, Major Facility Review

Major Facility Review is the District program that implements Title V of the Federal Clean Air Act (42 U.S.C. Section 7401 et seq.). It applies to major facilities and certain other facilities. Major facilities are facilities with a potential to emit, as defined, of 100 tons per year of any regulated air pollutant, 10 tons per year of any hazardous air pollutant, or 25 tons per year of any combination of hazardous air pollutants.

At this time, there are 104 recognized Title V facilities and 32 synthetic minor facilities.

Changes to the rule will also be made in order to:

- Allow permit requirements that are not federally enforceable to be amended administratively.
- Require the District to prepare a supplemental report, called a Statement of Basis, that discusses the decisions made by the District during permit preparation
- Amend the definition of Potential to Emit by requiring any conditions limiting emissions to be “practically” enforceable.

BACKGROUND

RULE BACKGROUND

The Board originally adopted Regulation 2, Rule 6, Major Facility Review, and the Manual of Procedures (MOP), Volume II, Part 3, Major Facility Review Permit Requirements, on November 3, 1993 to fulfill the requirement to implement a Title V program in the Bay Area. This program requires certain facilities to obtain federal operating permits.

The federal program is contained in Title V of the Federal Clean Air Act and parts 70 and 71 of Title 40 of the Code of Federal Regulations.

The rule now applies to major facilities, acid rain facilities, subject solid waste incinerators per section 129 of the Federal Clean Air Act, facilities in a source category designated by EPA, and synthetic minor facilities. Facilities that have emissions that are above 25 percent of the major source thresholds are subject to the requirement to determine applicability of the rule based on the facility's potential to emit.

On November 30, 2001, EPA granted full approval of the District's program. Subsequent to that rulemaking, various groups challenged the rulemaking by filing a petition in the Ninth Circuit Court of Appeals. Two of the issues raised by the petitioners may, in the opinion of EPA Region IX, have merit. EPA has requested that the District modify provisions of Regulation 2, Rule 6 to address these issues.

RULE AMENDMENTS

CORRECTION OF DEFICIENCIES

In a letter to the District dated July 18, 2002, EPA identified two provisions that may require amendment because they are inconsistent with 40 CFR Part 70. In response, District staff propose the following amendments:

Regulation 2-6-113 Exemption, Registered Portable Engines

2-6-113 **Exemption, Registered Portable Engines:** Portable internal combustion engines, except gas turbines, that are registered in accordance with Health and Safety Code Section 41753 are exempt from this regulation.(Adopted 10/20/99; Amended <date of adoption>)

In its letter to the District, EPA expressed concern that some equipment included in the ARB portable equipment registration program did **not** meet EPA's definition of "nonroad engines" at 40 CFR §89.2 (*See* Appendix I of this document for the text). Any such equipment would still be subject to the requirements of Title V. The two specific examples that EPA provided are:

Gas turbines. In its letter, EPA erroneously stated that gas turbines are not internal combustion engines. EPA has agreed that this statement was in error. However, EPA has identified turbine engines as a separate source category from reciprocating engines and has promulgated a standard for such engines under CAA § 111 (subpart GG). As a result, they are not non-road engines because of the exclusion contained in 40 CFR § 89.2 (2)(ii).

(2) An internal combustion engine is not a nonroad engine if:
…
(ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or …

See Appendix II for EPA Region IX's analysis.

The proposed revisions incorporate EPA's recommendation.

Asphalt Batch Plants. In its letter, EPA identified batch plants as a source category, included in the California portable engine program, which is not a non-road engine. After reviewing the existing language of 2-6-113, however, EPA has agreed that batch plants are not exempted from the District's program. No change is necessary to address this comment.

Regulation 2-6-201 Administrative Amendment

2-6-201 **Administrative Permit Amendment:** A non-substantive amendment to a major facility review permit. ~~Such amendments include the~~ The following amendments are administrative amendments: changes in recordkeeping format that are not relaxations of applicable requirements, the correction of typographical errors, the identification of administrative changes at a facility (such as a replacement of the facility's responsible official or a change in ownership or operational control of the facility which involves no physical or operational changes to the facility), the deletion of sources, the approval of a District rule into the SIP, ~~or~~ the imposition of ~~new or~~ more frequent emission monitoring requirements, or changes to applicable requirements and related monitoring that are not federally enforceable.
(Amended 10/20/99; <date of adoption>)

The second issue identified by EPA in its July 18, 2002 letter relates to two problems with the definition of Administrative Permit Amendment.

The first problem arises from the phrase "[s]uch amendments **include** the following." EPA is concerned that this phrase is too open-ended. EPA interprets 40 CFR §70.7(d)(1)(vi) to permit categories of actions not explicitly included in §70.7 to be treated administratively, but to require prior Administrator approval for each category. (*See* Appendix IV for the text of 40 CFR §70.7(d)(1)).

The second problem is the inclusion of "**new** or more frequent" monitoring as an administrative amendment. The intent of the language was to allow the District to

easily add “new” monitoring requirements where none existed before. EPA is concerned, however, that the term “new” is ambiguous and could be construed as including the replacement of an existing monitoring requirement with a “new,” less frequent, requirement. Even though this interpretation would make the following phrase “more frequent” worse than redundant, there is some potential for confusion. For example, the District considers an identical replacement to be a “new” source for New Source Review purposes.

Open-ended language

The proposed revision eliminates the open-ended language, as suggested by EPA. Under the existing language, administrative amendments to Title V permits are be submitted by the District to EPA. Amendments that the District considers to be administrative, but not within the listed categories, are flagged for EPA attention. If EPA determines that such a change should not be implemented administratively, the amendment is withdrawn and treated as a Minor Permit Amendment.

EPA is not comfortable with this approach, for two reasons. First, as indicated above, Part 70 may be interpreted to require **prior** approval by the Administrator for categories of modifications that may be handled administratively. Second, EPA does not have the resources to review more than a fraction of the Title V permits that must be reviewed, and those resources must be devoted to reviewing major permits and negotiating with special interest groups. For these reasons, staff propose following EPA’s suggestion.

This proposal will result in a reduction in the number Title V permit modifications. Rather than using the relatively cumbersome and expensive Minor Modification process to make insubstantial, but appropriate, changes, the District will postpone amending the permit until it is necessary to make an amendment that merits the extra process. As a result, the proposal’s potential for wasting resources on unnecessary process will be avoided, but at the expense of maintaining known defects in the permit longer than would otherwise be the case.

“New” monitoring

The proposed revision deletes the arguably ambiguous term “new.” This will have no effect on the Rule, as applied by the District. Under the existing language the District may add monitoring where no monitoring was required (“new” monitoring) as an administrative amendment. Under the proposed language, the District may still add monitoring where no monitoring was required as an administrative amendment, because any monitoring is necessarily “more frequent” than no monitoring.

Added category: amendments to state-only requirements

The proposed revision adds a category of actions (changes to "state-only" requirements) that may be amended administratively. State-only requirements are allowed, but not required, to be included in Title V permits. Because they are there for the convenience (of the regulatory agency, the facility, and the public) but not part of the federally enforceable permit, the federal procedural requirements do not apply. EPA has approved similar language in, for example, North Carolina. 15A NCAC 2Q.0514.

SUPPLEMENTAL ISSUES

District staff is proposing to address two issues in this rulemaking that were not identified by EPA as program deficiencies, but that are the subject of a federal court settlement between EPA and environmental groups. Though the District is not a party to this settlement, the settlement contemplates that the District will consider these issues in a rulemaking proceeding. District staff were consulted during the development of this settlement agreement, and informally agreed to present these issues to the Board. The two issues concern 1) the federal requirement that the District state the basis for decisions made in the course of issuing a Title V permit, and 2) the definition of "potential to emit" in Regulation 2, Rule 6.

Supplemental Issue 1: Statement of Basis

2-6-427 **Statement of Basis:** The APCO shall, in conjunction with the issuance of any major facility review permit, prepare a statement that, in conjunction with the permit itself, sets forth the basis for the draft permit conditions. This statement shall explain the basis for the decisions made by the APCO in issuing the major facility review permit, including the APCO's reasoning for imposition of additional monitoring requirements, and for the creation of any permit shield provisions. The statement of basis may, but need not, address requirements that are not applicable and for which no permit shield is provided. The statement of basis need not address the rationale underlying the establishment of any applicable requirement. (Adopted <date of adoption>).

EPA's regulations describing minimum criteria for Title V program approval, at 40 C.F.R § 70.6, do not require that the District's regulations implementing Title V include a requirement for a statement of basis.

EPA's regulations 40 C.F.R. § 70.7(a)(5), do, however, require that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions . . ." Although EPA has stated that it expects (in fact, requires) that a statement of basis be prepared for purposes of its review, it has not required permitting agencies to include explicit language to this effect in implementing regulations. This is because the appropriate action for EPA to take on a permit without adequate supporting documentation is to object to the proposed permit, not reject the entire program.

Regulation 2-6 does not require the preparation of a statement of basis. However, the District has in practice prepared supporting documents that meet this requirement in connection with proposal of each Title V permit. These documents were at first labeled the “engineering evaluation,” consistent with the terminology used by the District for its non-Title V permits. The District now refers to these documents as the “statement of basis.”

Regardless of the requirements of Part 70, the District considers it important to explain the rationale for any decisions made in reviewing the Title V permit. A written rationale for decisions made forms an important part of the administrative record for the Title V permit action. The administrative record will also typically include the permit application and supplemental materials, comments received during the public comment period, and the District’s response to any comments. The statement of basis is an important companion document to the proposed permit, but does not in and of itself constitute the administrative record for the permit action.

District staff is proposing to add specific language to Rule 2-6 to require preparation of a statement of basis for any permit issuance. Revisions to a Title V permit may or may not call for preparation of a statement of basis. The District will evaluate the need on a case-by-case basis.

Consistent with Part 70, the rule language would require that the statement of basis provide the basis for proposed permit conditions, including for any permit shield, to the extent that the basis is not contained in the permit itself (much of the legal and factual basis for applicable requirements is contained in the body of the permit. EPA has agreed that it is unnecessary to repeat this information in a second document). The proposed rule language would clarify that the District may, but need not, explain why any additional applicable requirements are not applicable. The proposed rule language would clarify that the District need not explain the basis for the applicable requirements themselves.

The proposed rule language would clarify that the statement of basis is only to provide rationale for decisions that are actually made in the Title V permit. The District does not, for instance, provide a rationale for the terms of an already-issued authority to construct permit if the action taken in the Title V permit is simply to incorporate the terms of that permit. The decision to issue an authority to construct, as well as development of permit conditions contained in an authority to construct, are made in a separate process, and the incorporation of those terms into the Title V permit generally is not cause for a renewed examination of those decisions. In some cases, the District will revise the terms of a District permit at the same time it takes action on the Title V permit. In those cases, the District will explain its reasoning for any revision.

The federal program does not require the District to provide a comprehensive explanation of why requirements not incorporated into the permit do not apply. Such an exercise would be, by its very nature, unwieldy and impractical. Where

the District is aware of specific and legitimate issues regarding applicability, it may choose to address those issues in the statement of basis, but it does not consider Title V or Regulation 2, Rule 6 to impose a generalized requirement to explain instances of non-applicability. A requirement that is not incorporated into the Title V permit, but for which no permit shield is provided, can still be enforced against the facility. Though it is important to identify and incorporate all requirements that do apply, the regulatory consequences of failing to incorporate a requirement is tempered by the absence of a permit shield. Accordingly, the District's practice is to address non-applicability issues where there is a close question, but not otherwise. By contrast, because establishment of a permit shield entails that the shielded provision cannot (without further revision to the permit) be enforced against the permitted facility, the establishment of a shield is a decision with regulatory consequences that should be explained. The proposed rule language would clarify that doing so is required in every instance where a shield is established.

Finally, it is important to note that this requirement codifies current District practice. This proposal does not add any content requirements beyond current practice. The Statement of Basis for each permit issued in 2002 would have complied with the proposed requirement.

Supplemental Issue 2: Potential to Emit

2-6-218 **Potential to Emit:** The maximum capacity of a facility to emit a pollutant based on its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a part of its design only if the limitation, or the effect it would have on emissions, is enforceable by the District or EPA and if compliance with the limit can be verified as a practical matter. A facility that exceeds an enforceable limitation is considered to have a potential to emit that is unconstrained by any such exceeded limit.
(Amended 10/20/99, <date of adoption>)

The current Regulation 2, Rule 6 definition of "potential to emit" very closely follows the federal definition promulgated in Part 70 and other EPA regulations. Whereas the federal definition used to require that PTE limits be "federally enforceable" this requirement was eliminated after the 1994 decision of the federal D.C. Circuit Court of Appeals in National Mining Association v. EPA, 59 F. 3d 1351 (D.C. Cir. 1995). That decision struck down the "federally enforceable" portion of the EPA definition, thus allowing for recognition of PTE limits that are enforceable only in state court. Subsequent to this, the District revised rule 2-6 to remove the "federal" requirement. 2-6-218 now allows for recognition of a PTE limit if it is "enforceable by the District or EPA." Certain Bay Area citizen groups would prefer that PTE limits be required to be "federally enforceable" in order to be recognized. The District is proposing a change to 2-6-218 that may partially meet citizen group concerns, and is taking comment on possible future changes.

To understand this issue, it is necessary to know some background on EPA's historical use of the term "federally enforceable."

Prior to the 1994 NMA decision, EPA used the term "federally enforceable" as an umbrella term describing a set of requirements that it considered necessary for a PTE limits to be valid. That is, in addition to its literal meaning – that the limit be enforceable as a legal matter by citizens and EPA in federal court – EPA defined that term to encompass also substantive and procedural components. Thus, EPA used "federal enforceability" to address 1) "legal" enforceability (i.e., who can enforce the limit, and in what legal forum), 2) "practical" enforceability (i.e., whether the limit is expressed in a way that allows verification of compliance, and 3) notice to the public during establishment of the limit. *See* 54 FR 27274 (June 28, 1989). In the NMA case, the D.C. Circuit, somewhat confusingly, struck down the "federally enforceable" requirement, but at the same time maintained that any PTE limit must be "effective," by which the court presumably meant enforceable as a practical matter.

District staff is proposing to add language to 2-6-218 that addresses practical enforceability. The additional language will specify that a limit will be considered part of the design of the source only if "compliance with the limit can be verified as a practical matter." This language is consistent with EPA's longstanding policy requiring practical enforceability, and with the District's longstanding practice of establishing PTE limits that allow for verification of compliance. The proposed rule language is also consistent with the NMA decision, which upheld the importance of recognizing only those PTE limits that are "effective," but which left to the discretion of state and local agency whether to take the additional step of requiring that PTE limits be enforceable in federal (as well as state) court.

District staff considered the appropriateness of rule text that would define "practical" enforceability in greater detail. However, there is a fundamental difficulty in addressing "practical" enforceability in a way that is suitable for the wide variety of limits developed to restrict PTE. PTE limits may, for example, take the form of limits on hours of operations or materials usage, or may require the use of add-on controls. PTE limits may apply to small (i.e., far below the applicability thresholds) or large (i.e., close to applicability thresholds) sources. A PTE limit may apply to an entire category of sources, or may be tailored to a particular facility. Any attempt to add greater definition to "practical enforceability" as that term applies to all PTE limits will very likely foreclose options that may make sense in a given context. The proposed rule language makes clear the basic requirement for practical enforceability without limiting the District's discretion to develop limits that make sense for a particular situation.

District staff is not recommending a restoration of the requirement that PTE limits be enforceable in federal court. Currently, a facility that wishes to take a limit on its PTE may do so pursuant to Rule 2-6-423, the District's "synthetic minor" rule. Because this rule has not been formally approved by EPA under its Clean Air Act

Section 110 or 112 authorities, the limits developed pursuant to this rule are not enforceable in federal court. A number of Bay Area facilities currently rely on PTE limits established pursuant to this rule. To abruptly require that PTE limits be enforceable in federal court would result in an immediate and unanticipated change in Title V applicability for these facilities. If the District's Title V rules are to be changed such that PTE limits must be enforceable in federal court, then a transition period should be established giving fair notice to the regulated community and allowing time for these facilities to obtain PTE limits that meet the enforceability criteria.

Restoration of the requirement that PTE limits be enforceable in federal court would entail that PTE limits are enforceable by EPA and citizens pursuant to Sections 113 and 304 (respectively) of the federal Clean Air Act. The premise underlying the need for this is that the prospect of citizen and EPA enforcement will provide a further incentive for sources to comply with their PTE limits beyond the incentive that exists by virtue of the potential for enforcement by the District alone. District staff believes that the potential for enforcement by the District is a sufficient incentive to assure compliance with PTE limits. However, it is possible that the additional threat of enforcement by the citizens or EPA would add some incremental incentive for facilities to comply. The relevant question is whether this additional incentive is significant, and whether it justifies the additional procedural hurdles for making a PTE limit enforceable as a federal matter. The District therefore invited comment on this question, both from the regulated community and from citizens. As far as the District is aware, EPA has not commented on this issue subsequent to the NMA decision. However, EPA was also invited to comment on this proposal.

As noted, District staff is not at this time proposing rule language that would require that PTE limits be enforceable as a matter of federal law. The proposed rule language addresses only that portion of EPA's former definition of "federally enforceable" that relates to practical enforceability. District staff will consider comments received in response to this notice, and may in the future propose language that addresses whether PTE limits must be enforceable in federal court.

EMISSIONS AND EMISSION REDUCTIONS

EMISSION REDUCTIONS ACHIEVED BY THE RULE

Air emissions from affected facilities are not expected to change due to the proposed amendments. The emission limitations that apply to the facility will not change with issuance of a Title V permit.

ECONOMIC IMPACTS

SOCIOECONOMIC IMPACTS

Subdivision (a) of Health and Safety Code section 40728.5 states:

> (a) Whenever a district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.

Since the change in the rule will have no impact on air quality or emissions limitations, an assessment of the socioeconomic impacts of the amendment are not required.

INCREMENTAL COSTS

Under Health and Safety Code Section 40920.6, the District is required to perform an incremental cost analysis for a proposed rule if the purpose of the rule is to meet the requirement for best available retrofit control technology or for a feasible measure pursuant to Section 40914. Since this amendment is neither, an incremental cost analysis is not required.

ENVIRONMENTAL IMPACTS

The District has determined that these amendments to Regulation 2, Rule 6 are exempt from CEQA pursuant to State CEQA Guidelines Section 15061, subd. (b)(3).

The Title V permitting program is an administrative program that gives EPA staff oversight and enforcement authority over large industrial facilities. Although the EPA may impose monitoring or recordkeeping requirements, the Title V permitting program does not add new or more stringent air emission control requirements for the facilities themselves. Consequently, District staff has determined with certainty that the proposed amendments will have no significant environmental impacts and thus are exempt under CEQA Guidelines Section 15061, subd (b)(3). The District intends to file a Notice of Exemption pursuant to State CEQA Guidelines, Section 15062.

REGULATORY IMPACTS

Section 40727.2 of the Health and Safety Code imposes new requirements on the adoption, amendment, or repeal of air district regulations. It requires an air

district to identify existing federal and district air pollution control requirements for the equipment or source type affected by the proposed change in district rules. The District must then note any differences between these existing requirements and the requirements imposed by the proposed change. Where the district proposal does not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements, the district may simply note this fact and avoid the analysis otherwise required by the bill.

Regulation 2, Rule 6 implements a federal program that has been delegated to the District. There are no state or federal rules that directly impose similar requirements. Therefore, the analysis is not required.

RULE DEVELOPMENT HISTORY

Regulation 2, Rule 6, was last amended on May 2, 2001. The purpose of the last amendment was to correct interim approval issues.

A copy of proposed changes was sent to EPA, Region IX, on February 3, 2003.

APPENDIX I

EPA letter dated July 18, 2002

APPENDIX II

Definition of Nonroad Engine in 40 CFR §89.2

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) the engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

APPENDIX III

EPA analysis of whether gas turbines may be considered non-road engines.

Military Tactical Support Equipment (TSE)

The Air Force has reinitiated discussion with Region IX regarding the treatment of Tactical Support Equipment (TSE), specifically small turbine engines, in regards to Title V permitting. The Air Force contends that all TSE meet the definition of "non-road engine[1]," as defined in 40 CFR § 89.2 to include any internal combustion engine which is portable or transportable but not regulated under CAA § 111. It is Region IX's position that because we have identified turbine engines as a separate source category from reciprocating engines and have promulgated a standard for such engines under CAA § 111 (subpart GG), they cannot be considered non-road engines under 40 CFR § 89.2 and thus should be considered stationary sources. I have briefly outlined below the issue the Air Force has identified and a summary of Region IX's position.

- TSE at Davis Monthan is powered by both reciprocating engines and turbine engines.
- The Air Force believes that all TSE meet the definition of "non-road engine[1]."
- 40 CFR § 89.2 includes in its definition of a non-road engine, any internal combustion engine which is portable or transportable but not regulated under CAA § 111.
- Under CAA section 111, EPA has made a distinction in its treatment of internal combustion engines, specifically regulating turbine powered engines under a separate standard as reciprocating internal combustion engines. Currently EPA has a promulgated NSPS standard (GG) to regulate turbine engines but has yet to promulgate a standard for reciprocating engines.
- It is Region IX's position that because we have identified turbine engines as a separate source category from reciprocating engines and have promulgated a standard for such engines under CAA § 111, they cannot be considered non-road engines under 40 CFR § 89.2 and thus should be considered stationary sources.
- 40 CFR § 60.331(a) defines a stationary gas turbine as follows: "any simple cycle gas turbine, regenerative cycle gas turbine or any gas turbine portion of a combined cycle steam/electric generating system that is not self propelled. ***It may, however, be mounted on a vehicle for portability,***" (Emphasis added).
- Region IX therefore concludes that the turbine engines, which comprise a portion of the Air Force TSE, meet the definition of a stationary gas turbine and are thus regulated under Subpart GG. Because they are regulated under CAA § 111, they do not meet the definition of a non-road engine, and should be considered stationary sources, regulated under Title V.
- The Air Force may contend that the turbine engines which comprise the TSE at Davis Monthan, are smaller than the 10.7 gigajoules per hour heat input threshold in § 60.330(a) and are therefore not regulated under CAA § 111 (though they have not provided documentation to this effect). However Region IX believes

that we have demonstrated our intent to regulate gas turbines as a separate source category under Subpart GG, and therefore gas turbines, regardless of size should be considered stationary sources.

[1]Non road engine rule: Under 40 CFR § 89.2 a Non-road engine means:

(1) Except as discussed in paragraph (2) of this definition, a non-road engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or (ii) In or on a piece of equipment that is intended to be propelled
while performing its function (such as lawnmowers and string trimmers); or (iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or ***(ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act;*** or (iii) the engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

APPENDIX IV

Definition of Administrative Permit Amendment in 40 CFR §70.7(d).

(d) Administrative permit amendments. (1) An "administrative permit amendment" is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) Incorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 70.7 and 70.8 of this part that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in § 70.6 of this part; or

(vi) Incorporates any other type of change which the Administrator has determined as part of the approved part 70 program to be similar to those in paragraphs (d)(1) (i) through (iv) of this section.